

Senate bill would extend 'fair use' clause to online education

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Educators involved in distance-learning programs that use digital technologies would be able to use portions of copyrighted materials—such as film, sound, and other media clips—without the expressed permission of the copyright holder, under a bill introduced into the Senate March 7.

Senate bill S.487, the Technology Education and Copyright Harmonization (TEACH) Act, is intended to update the Copyright Act of 1976 and account for advancements in digital transmission technologies that support distance education.

The current fair-use provisions for distance education, as set out in the 1976 law, grant an exemption from copyright liability for “in-class performance, displays of certain copyrighted works, and the transmission of those performances to outside locations” via broadcast television (analog technology).

“Unfortunately, currently copyright law does not allow the sharing of many copyrighted materials for educational purposes through digital means,” such as satellite broadcasts, two-way videoconferencing, and internet-based courses, said Sen. Orrin Hatch, R-Utah, who introduced the bill along with Sen. Patrick Leahy, D-Vt.

The legislation attempts to expand the fair-use exemptions of the current law, while minimizing the risks to copyright owners that are inherent in using digital formats to transmit materials.

If passed, the TEACH Act would:

- ?? Eliminate the current requirement that the instruction occurs in a physical classroom or that special circumstances prevent the attendance of students in the classroom;
- ?? Clarify that the distance-learning exemption covers the temporary copies that would need to be made in networked file servers to transmit material over the internet; and
- ?? Amend the current law to let educators show limited portions of dramatic literary and musical works, audiovisual works, and sound recordings, in addition to complete versions of non-dramatic literary and musical works, which currently are exempted.

The bill closely follows the recommendations of the U.S. Copyright Office, which had issued a report in 1999 urging Congress to update the current copyright law exemptions for distance education, while creating safeguards in response to proprietors' concerns. These safeguards include mandating that "any transient copies are retained for no longer than reasonably necessary to complete the transmission," and requiring schools to use "technological measures that reasonably prevent unauthorized access to and dissemination of the work."

Some critics of the bill, including the Association of American Publishers (AAP), say these safeguards don't go far enough. Citing the example of Napster, the MP3 file-swapping service that is the focal point of a current copyright lawsuit, a lobbyist for the AAP warned members of the Senate Judiciary Committee that changes to the current law could lead to increased piracy of copyrighted materials. In a March 13 hearing on the TEACH Act, Allen Adler, AAP's vice president of legal and governmental affairs, said he hoped the committee would reconsider the bill "so that the clever acronym that you've come up with for this legislation, TEACH, does not devolve into something that really would stand more for the Technology Education And Copyright Heist Act in the way it would be performed in application."

But educators who testified at the hearing said the bill is sorely needed, as licensing fees for the use of copyrighted materials threaten to undermine the growth of distance-education programs.

The "limitation on the types of works that may be [used] in remote transmission drives an untenable wedge between content in the classroom and content in distance education," said Gerald Heeger, president of the University of Maryland's University College.

Paul LeBlanc, president of Marlboro College in Vermont, told the committee that a student at his college wanted to use 15 seconds from Kenneth Branagh's *Henry V* for a multimedia presentation a few years ago. "It took almost two weeks to track down the right person with whom to speak, and when we finally had that conversation, they reported back to us that it would cost the student \$2,000 for a one-time use of that video," he said.

Educators hope that the bill, if passed, will bring practical changes to the copyright law.

"Students should be afforded the same opportunities and materials—copyrighted or otherwise—whether their classroom is created out of bricks and mortar or bits and bytes," Becky Huggins, educational technologist for the seeUonline virtual school program run by Alaska's Matanuska-Susitna School District, told eSchool News.

While he doubts whether the TEACH Act will create the "umbrella of fair use" that protects schools using analog-based resources, Rick Bauer, chief information officer for Pennsylvania's The Hill School, said he believes the legislation is a step in the right direction.

"This legislation is long overdue, but it will not put an end, by itself, to the continued pressure by content providers to secure a 'pay-per-view' treatment of educational materials in schools," Bauer said. "There is simply too much money to be made charging [licensing fees] based on individual use [of digital materials]."

Bauer also expressed concern about whether schools could be held liable for not adequately safeguarding the materials they make available to students digitally, if the legislation were to be enacted. "School libraries could find themselves accused of being the 'Napster' of the electronic resources they provide online and should prepare themselves accordingly," Bauer said. On the other hand, he said, "schools and libraries need to clearly protect the copyrighted materials that have been entrusted to them—whether analog or digital—and I see far too much abuse or lack of concern in this area."

Links:

Report on Copyright and Digital Distance Education

http://www.loc.gov/copyright/docs/de_rpirt.pdf

Association of American Publishers

<http://www.publishers.org>

seeUonline

<http://www.seeuonline.org>

The Hill School

<http://www.thehill.org>